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FLORIDA POLITICS

Disney outmaneuvered DeSantis' new governing board, but a legal fight is brewing

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Reedy Creek in Orange County, Florida, Wednesday, April 27, 2022. WILLIE J. ALLEN JR. *Orlando Sentinel* / TNS



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TALLAHASSEE

With the quiet of a church mouse, Disney may have gotten its revenge.

Targeted by Gov. Ron DeSantis and an angry Florida Legislature over its vocal opposition to the “Parental Rights in Education” law, also known as the “don’t say gay” bill, the entertainment company quietly put a plan in motion that, for now, has muted the governor’s attempt to exert leverage over it.

Days before Florida legislators voted to advance the governor’s proposal to take control of the Reedy Creek Improvement District, the special taxing district that operates the 39-square-mile property on which Walt Disney World exists, the district board voted to undercut the authority of its successor.

The governor’s office is now arguing that the agreements “may have significant legal infirmities that would render the contracts void” and plans to ask a court to intervene.

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At a book signing in suburban Atlanta on Thursday, DeSantis declared: “There’s a lot of back and forth going on now but rest assured, you ain’t seen nothing yet. There’s more to come in that regard.”

However, legal scholars said Thursday, Disney may have the advantage.

Two days after the Legislature voted last year to dissolve the special taxing district that governs Walt Disney World much like a city or county government, the company posted a notice on an Orange County website that it had agreed to two development agreements, according to publicly available records that have only come to light this week.

When it became clear that the attempt to dissolve the Reedy Creek Improvement District [violated the “pledge” the state](#) made to pay off the district’s bond debt before it was dissolved, the governor and legislators landed on an alternative — keep and

rename the district but replace the five-member governing board with five conservative allies of the governor's choosing.



From left, District Administrator John Classe, Ed Milgrim, legal counsel, Leila Jammal, Board of Supervisors, Jane Adams, BOS, Larry Hames, President of the BOS and Don Greer, BOS, meet with the day's agenda in the Reedy Creek District of Orange County, Fla., Wednesday, April 27, 2022. Willie J. Allen Jr. *Orlando Sentinel*

QUIET PRECISION IN A LEGAL MANEUVER

So as lawmakers convened in a special session in February to pass the bill, Disney executed its plan with precision and silence.

Under the arrangement, which lasts for decades into the future and covers 151 pages of text, Disney and the former Reedy Creek Improvement Board agreed to a development agreement and a set of restrictive covenants that effectively limit what the DeSantis-appointed board can do to influence Disney's future plans on the 39-square-mile property.

RECOMMENDED STORIES



The agreements freeze in place the regulations that were in effect at the time of the agreement and “an extraordinary” agreement “that basically limits what Reedy Creek can do with its own property,” said Jake Schumer, a municipal attorney in the suburban Orlando law firm of Shepard, Smith, Kohlmyer & Hand.

The two major agreements include the development agreement, which leaves in place the local land use regulations that favor Disney for the next 30 years and a set of restrictive covenants, which limit what the board can do with Disney’s own property.

“They would still have a lot of responsibility to basically keep the lights on, keep the roads moving,” Schumer said. “They would just be doing meat and potatoes, local government stuff — making sure that all the public infrastructure works as intended.”

What the new board loses, however, is the regulatory power over land-use regulations, authority over such things as building heights, future development projects — including the potential regulation of two new theme parks allowed in the agreements, he said.

NEW BOARD CAN’T SAY ‘DISNEY’

Among the restrictions is a prohibition on the board using the Disney name without the corporation’s approval or “fanciful characters such as Mickey Mouse.”

If a court were to declare the rules do not extend into perpetuity, the agreement remains valid until “21 years after the death of the last survivor of the descendants of King Charles III, king of England.”

“It’s a fallback. They had some fun,” Schumer said.

The agreements are contracts, executed in publicly noticed meetings and done in the open, adhering to Florida’s open government Sunshine Laws, and no one noticed.

The first clue came on April 19, 2022, two days after the Legislature passed the bill to dissolve the Reedy Creek district. Disney notified Orange County that it had signed two new agreements with the district.

Then Disney waited until January to formally have the board adopt the measures. First, it held a public hearing to announce the agreements on Jan. 25. On Feb. 8, a day before legislators passed a new law to give the governor the authority to replace the Disney-appointed board, formally adopted them.

NEW BOARD VOWS TO FIGHT THE RESTRICTIONS

Now, the DeSantis-aligned board, which has been renamed the [Central Florida Tourism Oversight District](#), has vowed to fight.

At its meeting Wednesday, it voted to hire three law firms — whose fees will all be paid by Disney, the sole source of revenue for the taxing district.

“The arrogance of [@disney](#) continues,” wrote Bridget Ziegler, a conservative activist who DeSantis appointed to the board, [on Twitter](#). “From ignoring parents and allowing radicals to sexualize our children, to now ignoring Florida taxpayers by sneaking in a last-minute sweetheart development agreement, Disney has once again overplayed their hand in Florida. We won’t stand for this and we won’t back down. If unlawful actions were taken, this development agreement will be nullified.”

But in order to challenge the contract, you have to have legal standing, said J.C. Planas, a Miami lawyer who teaches about Disney’s special district in his local government law class at a South Florida law school.

The previous board was comprised of five residents of the district who all are Disney employees, whereas the new board includes no residents and no Disney employees, he said.

“A development order like this can’t be challenged,” Planas said. “There’s no standing on behalf of the governor. There’s no standing on behalf of the new board. The only people standing are the residents because it’s a development agreement.

“And if for some reason the state could prevail, it will put a giant hole not only in zoning law, but in contract law because it would mean that a municipal entity is allowed to change its mind on a contractual issue.”

Schumer said, however, that the state could argue that there is no good justification for the district to have entered into the agreement and, “there is a requirement that governments always be serving a public purpose.” A judge could agree that “there was not a valid public purpose behind this agreement and therefore it was void.”

Disney carefully followed state law, Schumer added, when writing the agreement, and “Disney definitely has a stronger case.”

A challenge “would take a change in how we understand local government law in order for Disney to lose because it really follows that local government development act very closely.”

But lawyers working with the governor’s office have suggested that a government cannot attempt to cede governmental decision-making authority to a private entity or the contract is void.

Brian Aungst Jr., a member of the new board, called it a “subversion of the will of the voters and the Legislature and the governor. It completely circumvents the authority of this board to govern.”

Schumer disagrees.

“It made Disney the government the same way I’m the government of my own property,” he argues. “They didn’t cede government authority. They still have the ability to adopt any kind of regulations they want, they just won’t be effective for the property covered by the development agreement.”

THERE COULD BE MORE LEGAL MANEUVERING

So what comes next?

Michael Wolf, a professor of local government and property law at the University of Florida, said the state has options, such as rewriting the law to declare that development agreements are no longer lawful in Florida.

But if the state were to do that, Disney could respond that Florida has preempted its private property rights and that “would open up a difficult conflict for the Florida Supreme Court.”

“The conservative court will have to choose between defending the rights of private property owners, which is typically something that conservative judges do, and supporting an administration that is taking, perhaps what appears to be a conservative political strategy against a major corporation,” he said.

This may be the beginning of many years of litigation, Schumer predicted.

“It may be the district tries to bring an action to invalidate the contract. It may be that it just decides to violate the contract and wait for Disney to sue,” or there’s a third option and that both parties use the standoff “to negotiate an agreement with the new board.”

Clay Calvert, a professor of law at the University of Florida who specializes in First Amendment law, said that Disney could also pursue a First Amendment retaliation claim, accusing the state of punishing it “for speaking out against protected speech.”

Planas suggests the state should simply stand down and avoid making another miscalculation.

“The state’s best option is to do nothing and just keep the egg on their face,” he argued.

Florida legislators who were asked to comment said they didn’t have any answers.

Senate President Kathleen Passidomo said Thursday that legislators would “take a look at it” but would not commit to introducing any changes this session.

“We’ve got a lot on our plate for the rest of the session,” she said. “So I don’t anticipate doing anything in the near term.”

Rep. Randy Fine, the Palm Bay Republican who sponsored the bill to dissolve the district last year, said he was unaware of the new developments or why the state missed the early signals from Disney.

“I don’t know anything about it,” he said. “I know the new board is upset.”

McClatchy Washington D.C. reporter Alex Roarty and Tampa Bay Times staff writer Lawrence Mower contributed to this report.

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